

**REVIEW ARTICLE**

# POSITION OF THE VICTIM IN CRIMINAL ACTS ILLEGAL LOGGING

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## ABSTRACT

The purpose of this study is to analyze the position of victims in criminal acts of illegal logging and find legal reasons to the extent that the state pays more attention to State losses as victims compared to the position of the community as victims in illegal logging. The paper uses a qualitative approach with normative legal research. Data collection techniques using library research, with comparing some related laws and regulations. This paper emphasized that: (1) The position of the victim in the case of illegal logging in the criminal justice system is still lacking due to the regulation of the law and the principles in the Criminal Procedure Code itself more prioritizing retribution as embezzlement, such as seeing how much loss arises due to the perpetrators criminal without seeing the position of the community as victims indirectly. Whereas the State is more concerned with the State's loss than the community as a victim. There are principles in the Indonesian criminal procedure law which are strengthened by the Constitutional Court's decision which argued that State control over the earth and water and the natural resources contained therein. This means that the state is given the freedom to regulate, make policies, manage and oversee the use of the earth and water and natural resources contained in it with a constitutional measure that is as much as possible the prosperity of the people and considers the rights of the people as victims only of an objective nature where the state takes policy with more attention to victims generally.

Keywords: *Victim; Illegal Logging Crime; Criminal Act; Criminal Law; State Losses*

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## INTRODUCTION

Illegal Logging or commonly called forest destruction which covers illegal logging of forest trees, is an act that is not favored by the community and the State. The legal basis prohibiting illegal logging practices is Law Number 23 of 1997 concerning environmental management which was later replaced with Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 41 of 1999 concerning Forestry and Law Number 5 of 1990 concerning Conservation Indonesian biological natural resources. Whereas in the case of imprisonment of the perpetrators of illegal logging (forest destruction) regulated in law number 41 of 1999 with the heaviest criminal threat is 15 years and a fine of 5 billion.

The practice of illegal logging, by taking wealth of natural resources in agriculture, especially forests, not only happens to be sold within the country, but also sold to other countries. As a result of these sales it will result in huge losses for the country and also the surrounding community. In his brief remarks Prof. dr. Kaligis S.H., M.H. said that the fact of illegal logging took place and smuggling to other countries such as Malaysia and Singapore which was marked by the loss of 28 million ha of forests and consequently was a decline in per capita income for the Republic of Indonesia. At present Singapore's income from processing natural resources, especially forests, is 7.7% while Indonesia is 5.2%. Meanwhile, when compared with Singapore which in fact the position of natural wealth is not as good as Indonesia (Ricar, 2012).

Article 33 Paragraph (3) of the 1945 Constitution states that: "The earth, water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people". This means that natural resources can be used for the interests and prosperity of the people, held by the state or government. Therefore, natural resources are very important for the lives of many people to help people meet their economic needs.

In cases of criminal acts (Illegal logging) the loss is the surrounding community and the state. The purpose of the forest is to protect the community from the dangers of floods, landslides and prolonged drought. However, the state takes over by punishing the perpetrators of these crimes and ignoring the community as victims, even though in a crime that needs attention is the perpetrators and victims (Arifin 2020a; 2020b). However, because the rules explain that the victims who often appear to be the state take control of the state according to the rules of law without regard to the situation of the community. Evidence that the position of the victim is often forgotten is found in the principles of our criminal procedure law which is more concerned with the perpetrators of crime than the victims, namely:

1. The principle of presumption of innocence
2. Open trial principles
3. Principle of direct and oral inspection
4. Principles of speedy justice (Surahman & Hamzah, 2015: 35)

All of these principles are always highlighted by the perpetrators and state losses. For example, in criminal acts of forest destruction (illegal logging) is the responsibility of the perpetrators and how much the damage suffered by the state, but the government does not pay attention to social losses that is losses suffered by the community (also the environment) be it individuals, environmental groups of people who suffer as a result of the destruction of the forest (Aji, Wiyatno, Arifin, & Kamal 2020; Arifin & Choirinnisa 2019) Based on this reasoning, it can be drawn up the formulation of problems related to the role and position of the community as victims of illegal logging, while what is always applied is state losses in general and legal basis which justifies the state paying less attention to communities as indirect victims of forest destruction (illegal logging).

## METHOD

This study uses a qualitative method that is the presentation of descriptive analytic research results not with numbers in a phenomenon that functions to more easily understand phenomena that occur in society that are not yet widely known.

Qualitative approach which means that the core of the general principles underlying the manifestation of symptom units in human life, or analyzing patterns arising from socio-cultural phenomena by using culture in society to obtain a picture of the patterns that applicable. The patterns were analyzed again using objective theory (Ashofa 2013: 20-21).

This type of research is normative juridical legal research. This type of legal research is carried out by examining library materials or secondary data as a basic material to be examined by conducting a search of the regulations and literature relating to the problem under study (Soekanto 1986; Arifin, Waspiyah, & Latifiani 2019). Legal research legally means that research refers to studies of existing literature or to secondary data used, namely the 1945 Constitution, Law No.32 of 2009 concerning environmental protection and management, Law Number 8 of 1981 concerning Criminal Procedure Code, Law Number 41 of 1999 concerning Forestry, Law No 13 of 2006 concerning the Protection of Witnesses and Victims, Law Number 5 of 1990 concerning Conservation of Indonesia's Living Natural Resources. The data validation technique is done by examining its credibility using triangulation techniques (Sugiyono 2010).

## ILLEGAL LOGGING: HOW DOES LAW REGULATES THIS?

The State of Indonesia has issued various regulations concerning the protection of the forestry sector in positive law as stipulated in Law Number 41 of 1999 concerning forestry in conjunction with Law Number 19 of 2004 concerning the establishment of government regulations in lieu of Law Number 1 of 2004 concerning amendments to Law Number 41 of 1999 concerning Forestry becomes Law. Further protection on forestry which is also regulated in government regulation No. 45/2004 concerning forestry, and criminal sanctions threatened with illegal loggers Act No. 41 of 1999 and Law No. 18/2013 concerning prevention and destruction The forest, the heaviest criminal threat aimed at perpetrators of illegal logging, is 15 years in prison and a fine of Rp. 5 billion.

Indonesia already has regulations to manage the environment, namely Law No. 5 of 1990 concerning the conservation of Indonesia's biological natural resources which focuses on the preservation of biodiversity, both biodiversity in state and non-state forest areas.

The development of legislation administration from time to time both the diversity of natural resources themselves, their protection and their ecosystems from year to year are always damaged.

Four (4) criminal aspects / as causes of violations of the environment (Environmental Damage) according to Ahmad Santosa as follows:

1. Failure in making Policy (Policy Failure)  
Weak capacity of regulators in supervision or strict policies in tackling the destruction of natural resources, it means that development is only oriented to Exploitation (Use Oriented) so that existing natural resources are drained in such a way and forget what is left for tomorrow which is important for our children and grandchildren as the next generation.
2. Failure in implementing / implementing policy. Development is partial or added without regard to the quality of the building to be sustainable.
3. Failure due to weak institutional arrangement of government (Institutional failure). The low capacity of regulators in conducting supervision and law enforcement. This means that there is still collusion between government supervision and law enforcement.
4. Failure at the level of civil society to protect the Natural Resource ecosystem and carry out the Public Control (Society's Failure) function. Lack of community understanding and cultural influences on the importance of hatyati natural resources for the benefit of common life.

Of these four weaknesses when related to Indonesia's biological natural resources viewed in terms of environmental law on forestry, illegal logging or tree felling in the forest area often occurs together.

## I. CRIMINAL ASPECTS IN ILLEGAL LOGGING FOREST DAMAGE

According to Muladi, Illegal Logging crime can be seen from several elements in general in the Criminal Code, namely:

### 1. Damage

Destruction as regulated in Article 406 through Article 412 of the Criminal Code is limited only to the destruction of goods in the sense of ordinary goods owned by people (Article 406 of the Criminal Code). The goods can be in the form of goods that are lifted and not lifted, but goods that have a social function means that they are used for public purposes as regulated in Article 408, but are limited

to certain items as mentioned in that Article and are not relevant to be applied to crime of destruction Forest.

## 2. Theft

Theft according to the explanation of Article 362 of the Criminal Code has the following elements:

- a. The act of taking, which is taking to be mastered
- b. An good, in this case goods in the form of wood that were taken when not in the possession of the perpetrators
- c. Partly or wholly owned by someone else, in this case the forest can be customary forest and private forest which is included in the State forest or State forest that is not encumbered
- d. With the intention of having possession by breaking the law.

## 3. Smuggling

Until now, there are no laws and regulations that specifically regulate timber smuggling, even in the Criminal Code which is a general provision against criminal acts does not yet regulate smuggling. During this time smuggling activities are often only equated with offense theft because it has the same element, that is, without the right to take the property of others.

## 4. Counterfeiting

The falsification of documents is regulated in Articles 263-276. Falsification of material and trademark is regulated in Articles 253-262, falsification of letters or fabrication of fake letters according to the explanation of Article 263 of the Criminal Code is to make a letter whose contents are not appropriate or to make such a letter, so that it shows as the original. Letters in this case are those that can issue: a matter, an agreement, debt relief and a letter that can be used as a description of an act or event. The criminal threat against falsification of the letter according to Article 263 of the Criminal Code is a maximum of 6 years imprisonment, and Article 264 of the Criminal Code is a maximum of 8 years

## 5. Embezzlement

The embezzlement of the Criminal Code is regulated in Articles 372 through Article 377. In the explanation of Article 372 of the Criminal Code, embezzlement is a crime that is almost the same as theft in Article 362. The difference is that the theft of possessed goods is still not in the hands of thieves and must still be "taken" "While the embezzlement of the possession of the item is already in the hands of the maker, not by crime.

## 6. Heling

In the Criminal Code, basically detention is another term for conspiracy or conspiracy or evil help. Retention in foreign language "heling" (Explanation of Article 480 of the Criminal Code). Further explained by R.Soesilo, that the act was divided into, the act of buying or renting goods that are known or reasonably suspected to be the proceeds of crime. The criminal threat in Article 480 is a maximum of 4 years or a maximum fine of Rp 900 (nine hundred rupiah).

From the general elements of crime above, it can be concluded that there are several criteria for forestry crime, one of which is the modus operandi in which the government and civil servants who have authority in the field of forestry, whether civil or military, shareholders in logging in carrying out deforestation by illegal there is no firmness in the law that regulates even to the falsification of documents about the validity of forest products (SKSHH) so that the perpetrators often escape the legal trap, because the applicable elements have not reached all aspects of the perpetrators of crime because the law has not clearly stipulated about 1). Existing regulations and policies cannot solve problems, especially environmental crime, 2). UU no. 23 of 1997 in conjunction with Law No. 32 of 2009 cannot be an effective instrument for protecting the environment, 3). While technological developments are followed by increasingly sophisticated quality and quantity of crime and often have regional and national international impacts.

According to Article 50 of Law No. 41 of 1999 concerning Forestry, in the category of Illegal logging, including: working and or using and or occupying illegal forest areas (illegal), encroaching forest areas, cutting down trees in forest areas, burning forests, and others. The dimensions of illegal logging activities are:

- a. Licensing, if the activity does not have a permit or the permit is not yet available or the permit has expired,
- b. Practice, if in practice does not apply logging according to regulations,
- c. Location, if carried out at a location outside the permit, cut down in a conservation / protected area, or the origin of the location cannot be shown,
- d. Wood Production, if the wood is careless (protected) type, there is no diameter limit, no origin of wood identity, no company identification,
- e. Documents, if there are no legal documents,
- f. Actors, if individuals or business entities do not hold logging business licenses or carry out illegal activities in the forestry sector,
- g. Sales, if at the time of sale there were no documents or physical characteristics of wood or wood smuggled. So, basically, illegal logging is illegal logging, transportation and sale of timber or does not have a permit from the local authority.

## II. POSITION OF THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM

The position of the victim in the criminal justice system as a unit of a crime has not been fully considered. Whereas the rights of victims in the criminal justice system should be seen as an integral part of the overall criminal justice system. According to Ali Masyhar said that "the position of the victim or people who were harmed by the existence of a crime so far has been very sad, the victim seems to be forgotten even though if we want to do law enforcement in the criminal justice system, it is necessary to pay attention to what is included in the legal protection against victims of criminal acts "(Masyhar 2008: 91). Meanwhile, according to H. S. Brahmana (2015: 54) states the position of victims in the criminal justice system (Criminal justice system) has not been placed fairly even tends to be forgotten where this condition has implications for two fundamental things namely:

1. There is no legal protection for victims and
2. Judges' decisions have not fulfilled a sense of justice for victims, perpetrators or the wider community.

In this case concerning illegal logging cases which, according to ICW records from 2005-2008, of the 205 illegal logging cases that were tried experienced criminal disparities namely, 76% only tried the field operators, 24% the main actors, and from 24% it was more than 71% are acquitted (Ricar, 2012: 5; Arwana & Arifin 2019) .

Of course, in the judge's decision raises the debate from aspects of the philosophy of punishment and the implementation of the decision of the judge in terms of protecting the parties concerned.

## POSITION OF THE VICTIM IN THE INDONESIAN CRIMINAL CODE

The position of the victim in positive criminal law has not explicitly formulated provisions that concretely or directly provide legal protection for the victim. The meaning is still abstract and against the law. In this case Ali Masyhar defines the position of the victim in the Indonesian criminal law or positive law which is always described by the Indonesian Criminal Code that "the position of the victim in criminal law has no meaning or is abstract in which as part of the protection of the victim has



not received attention from the Indonesian Criminal Code in terms of compensation restitution "(Mashhar, 2008: 92). Apart from that, the articles in the Indonesian Criminal Code tend to pay more attention to the perpetrators of criminal acts, namely regarding the formulation of criminal acts made by the perpetrators, criminal liability and criminal threats that will be charged to the perpetrators of criminal acts. In this case the position of the victim is also still very little attention.

## POSITION OF THE VICTIM IN ILLEGAL LOGGING CRIMES

As it has been written and shared that the illegal logging case is not only detrimental to the state as a victim but is detrimental to the community as an indirect victim which in illegal logging can cause environmental aspects that have an impact on floods, droughts that affect the joints of life or on the contrary landslides can disrupt the community's economy. Indonesia has a state forest area of 112.3 million ha, consisting of 29.3 million ha of protected forest, 19 million ha of conservation forest and 64 million ha of production forest.

Data from the Indonesian Ministry of Forestry in 2010 stated that deforestation (forest loss) was mainly caused by encroachment (60%), conservation (22%), road use (16%), and as much as (0.6%) caused by mining.

Meanwhile, according to Global Forest Watch, noted that Indonesia from 2001 to 2014 globally ranked fifth and in 2012 as the highest record for loss of tree cover 30% canopy cover which reached 2.26 million ha. associated with countries with tree cover loss. The loss of tree cover in question is the loss of tree cover in various landscapes, such as tropical rainforest to plantation areas without explaining the cause. 2012 was recorded as the highest record. In addition, according to the Ministry of Environment and Forestry, said that deforestation in Indonesia showed a declining trend in the period 2009 to 2014, while the results of the 2017 land cover data analysis in the 2016-2017 period as conveyed by the Minister of Environment and Forestry, Siti Nurbaya in Jakarta (29/01.2017), national deforestation (net) is 479 thousand ha, with details in the forest area of 308 thousand ha, and in Other Use Areas (APL) is 171 thousand ha with deforestation rate in 2016, which is 630 thousand Ha. Forest area in 2017 covers 93.6 million ha. In addition, Siti Nurbaya also said that currently there is a decline in deforestation rates in the forest area, which is 64.3%, compared to 2014 which amounted to 73.6%.

Whereas in the case of justification or legal basis in which the government / state is more concerned about the state's loss than the community as a victim indirectly, there are principles that apply in Indonesian procedural law and are also strengthened by the Constitutional Court's decision in "MKRI ruling Number 3/PUU-VIII / 2010 "which argues that state control over the earth and water and the natural resources contained therein. This means that the state is given the freedom to regulate, make policies, manage and oversee the use of the earth and water and natural resources contained in it with a constitutional measure that is as much as the prosperity of the people, so it can be concluded that the rights of the community as victims are only objective where the state takes policy in the interests of the country in general .

## CONCLUSION

This study concludes that the position of the victim viewed from the perspective of criminal justice as a state institution can be said to be merely complementary. This is due to the current Criminal Procedure Code which is more oriented towards the perpetrators referred to as the concept of retributive justice (retaliation) so that the position of the victim in the criminal justice system has not received a balanced place with the perpetrators. The legal basis that can justify the state being placed as a victim of forest destruction (illegal logging) is Article 33 paragraph (3) of the 1945 Constitution states that: "the earth, water and natural resources contained therein are controlled by the state and used for the maximum prosperity of the people ". And strengthened again with the decision of the Constitutional Court in the "MKRI decision No. 3 / PUU-VIII / 2010" which argues that state control over the earth and water and natural resources contained therein. Therefore, it can be concluded that the rights of the community as victims are only objective in that the state takes policies in the interests of the state in general.

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